

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 201901383	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/12/2019 12:40 AM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 8/12/2020	EO SOL 3/29/2021	
Date/Time CV Reported Thu, 02/14/2019 11:22 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/14/2019 11:22 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jair Flores	22120	959637	070 PCT
2. An officer			
3. SGT Hasuk Yang	02834	942729	070 PCT
4. POM Frank Fiorenza	18475	957588	070 PCT
5. POM Miguel Salgado	09053	951197	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Marika Williams	04520	961581	070 PCT
2. POM Andrew Demichael	12438	946914	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jair Flores	Force: Police Officer Jair Flores used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Miguel Salgado	Force: Police Officer Miguel Salgado used physical force against § 87(2)(b)	§ 87(2)(b)
C. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D.POM Frank Fiorenza	Discourtesy: Police Officer Frank Fiorenza spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Frank Fiorenza	Off. Language: Police Officer Frank Fiorenza made remarks to § 87(2)(b) based upon the physical disability of § 87(2)(b)	§ 87(2)(b)
F.SGT Hasuk Yang	Abuse: Sergeant Hasuk Yang threatened to arrest § 87(2)(b)	§ 87(2)(b)
G. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	§ 87(2)(b)
H.POM Jair Flores	Abuse: Police Officer Jair Flores searched § 87(2)(b)'s recording device.	§ 87(2)(b)
I.POM Jair Flores	Abuse: Police Officer Jair Flores deleted information on § 87(2)(b)'s electronic device.	§ 87(2)(b)

### Case Summary

On February 14, 2019, § 87(2)(b) filed this complaint with the CCRB via telephone [BR 01].

On February 12, 2019, at approximately 12:39 a.m., PO Jair Flores and PO Miguel Salgado, both of the 70<sup>th</sup> Precinct, stopped § 87(2)(b)'s vehicle in front of § 87(2)(b) in Brooklyn. Officers, including PO Flores and PO Salgado, pulled § 87(2)(b) out of the vehicle and brought him to the ground (**Allegations A and B: Force, § 87(2)(g)**). While handcuffing § 87(2)(b) an officer(s) instructed § 87(2)(b) to give the officers his “fucking” hands and referred to him as a “fucker” or as a “motherfucker” (**Allegation C: Discourtesy, § 87(2)(g)**). While awaiting EMS, § 87(2)(b) discussed how he wanted to speak to the supervisor so he could “present his case.” PO Frank Fiorenza, also of the 70<sup>th</sup> Precinct, told § 87(2)(b) that he did not “have shit” because the officers had him on camera and also referred to § 87(2)(b)'s license plate as “bullshit.” (**Allegation D: Discourtesy, § 87(2)(g)**). He also mocked § 87(2)(b)'s stutter (**Allegation E: Offensive Language, § 87(2)(g)**).

§ 87(2)(b) sustained a laceration to his left eyebrow as a result of being brought to the ground. He was sent to § 87(2)(b) where he received three stitches. He was charged with § 87(2)(b)

[BR 02].

After § 87(2)(b) was sent to the hospital, his parents, § 87(2)(b) and § 87(2)(b) went to the scene of his arrest. There, Sgt. Hasuk Yang, also of the 70<sup>th</sup> Precinct, allegedly threatened to arrest § 87(2)(b) and an officer allegedly threatened to arrest § 87(2)(b) (**Allegations F and G: Abuse of Authority, § 87(2)(g)**).

When § 87(2)(b) picked up his cell phones from the stationhouse after his arrest, he realized that all the photos and videos pertaining police encounters were deleted (**Allegations H and I: Abuse of Authority, § 87(2)(g)**).

### Findings and Recommendations

**Allegation A – Force: Police Officer Jair Flores used physical force against § 87(2)(b)**

**Allegation B – Force: Police Officer Miguel Salgado used physical force against § 87(2)(b)**

It is undisputed that after stopping § 87(2)(b)'s vehicle and deciding to place § 87(2)(b) under arrest, PO Flores returned to § 87(2)(b)'s vehicle, instructed him to step out of the vehicle, and opened the door to § 87(2)(b)'s vehicle. It is further undisputed that PO Salgado intervened and again instructed § 87(2)(b) to step out of the vehicle, that § 87(2)(b) simultaneously moved into the passenger seat of the vehicle, and that officers, including PO Flores and PO Salgado, subsequently pulled § 87(2)(b) out of the vehicle and took him to the ground, causing § 87(2)(b) to sustain a laceration on his left eyebrow. Because § 87(2)(b) was arrested and charged with numerous VTL violations, no vehicle stop allegation was pled.

§ 87(2)(b) was interviewed at the CCRB on February 22, 2019 [BR 03]. He stated that PO Flores approached his vehicle and asked for his identification. § 87(2)(b) gave PO Flores his § 87(2)(b) identification card. PO Flores walked back to his vehicle and then returned and

asked § 87(2)(b) who “§ 87(2)(b) was. Five years ago, § 87(2)(b) legally changed his name from § 87(2)(b) to § 87(2)(b). § 87(2)(b) responded that as per his identification, he is § 87(2)(b). At that point, PO Flores told § 87(2)(b) that he was under arrest. PO Flores then opened § 87(2)(b)'s door, which was unlocked. PO Flores had not instructed § 87(2)(b) to exit the vehicle. § 87(2)(b) reached towards the frame of the door to push the door lock down, but PO Flores had already opened the door. § 87(2)(b) then leaned away from PO Flores and moved towards his front passenger seat in an attempt to start a video recording. PO Flores then reached in and grabbed § 87(2)(b)'s left arm. § 87(2)(b) was holding his phone in one hand and his keys in the other. Numerous officers grabbed ahold of § 87(2)(b)'s arms, legs, and torso and “dragged” him out of the vehicle by lifting him into the air and carrying him out. Once out of the vehicle, officers, including PO Flores, brought § 87(2)(b) to the ground head first. The impact caused § 87(2)(b) to lose consciousness. When he awoke, he realized he was lying face down on the ground and his hands were tucked underneath his chest. He also noticed that he was bleeding. § 87(2)(b) could not bring his hands out from under him because roughly eight officers were on top of him and had him pinned to the ground. § 87(2)(b) told the officers that he could not move with their weight on top of him but the officers continued telling him to stop resisting and to give them his hands. The officers then wrestled § 87(2)(b)'s arms out from under him. According to § 87(2)(b)'s medical records [BR 10], he was taken to § 87(2)(b) where he was diagnosed with a one-centimeter laceration to his left eyebrow and swelling to the left eyebrow. He received three stitches to close the laceration.

BWC footage recorded by PO Salgado and PO Flores [BR 07 and 08] shows that at, respectively, the 7:00 and 7:02 time stamps, PO Flores instructed § 87(2)(b) to step out of the vehicle and simultaneously opened the door of the vehicle. PO Salgado then stepped in, at the 7:05 time stamp on footage from his own BWC, instructed § 87(2)(b) step out of the vehicle, told him not to “fight,” and turned off the vehicle. PO Salgado again instructed § 87(2)(b) to exit the vehicle, at the 7:12 time stamp, as § 87(2)(b) leaned away from the officers and began moving into the front passenger seat. Officers then grabbed ahold of § 87(2)(b) at the 7:25 time stamp on footage from PO Salgado's BWC and the 7:26 time stamp on PO Flores' BWC footage, pulled him out of the vehicle, and took him to the ground. Although § 87(2)(b)'s legs appeared extended in the officers' direction, it is unclear from the footage alone if he kicked or attempted to kick any officers. Once on the ground, at the 7:35 time stamp on PO Flores' BWC footage, officers instructed § 87(2)(b) to stop resisting and to give them his hands. Officers are also heard asking about what was in § 87(2)(b)'s hand, at 7:37 on PO Salgado's BWC footage, and at 7:39 on PO Flores' BWC footage. § 87(2)(b) told the officers that he had his phone and keys in his hands, that his hands were pinned under him, and that he was bleeding. Approximately one minute and 45 seconds later, at the 9:00 time stamp on PO Salgado's BWC footage, the officers successfully handcuffed § 87(2)(b) and stood him up against his vehicle.

Numerous officers assisted in bringing § 87(2)(b) out of the vehicle and taking him to the ground. However, because BWC footage shows that PO Flores and PO Salgado initiated the removal, physical force allegations were pled solely against them. PO Salgado was not interviewed because his testimony would not alter the recommended findings below.

PO Flores was interviewed at the CCRB on October 17, 2019 [BR 04]. He stated that after asking for § 87(2)(b)'s license, registration, and proof of insurance, § 87(2)(b) provided a “driver's passport,” which is not a U.S. government-issued document. PO Flores returned to his vehicle and ran § 87(2)(b)'s name through the DMV database. He discovered that § 87(2)(b)'s legal name was § 87(2)(b) and that his driver's license was suspended. As a result, PO Flores

decided to arrest § 87(2)(b) for driving with a suspended license. PO Flores and PO Salgado then returned to § 87(2)(b)'s vehicle. PO Flores believed that he – rather than PO Salgado – ordered § 87(2)(b) to step out of his vehicle but could not recall which of them opened § 87(2)(b)'s door. PO Flores did not recall how many times he instructed § 87(2)(b) to exit the vehicle. § 87(2)(b) did not respond to PO Flores verbally, but instead moved away from the officers and toward the passenger seat. While moving toward the passenger seat, § 87(2)(b) reached for his keys or the shifter, prompting PO Flores to believe that § 87(2)(b) might try to drive away. PO Flores attempted to pull § 87(2)(b) out of the vehicle to prevent him from fleeing and to place him into custody. PO Flores grabbed § 87(2)(b) by his legs while PO Salgado grabbed § 87(2)(b) by his waist. As the officers tried to remove § 87(2)(b) from his vehicle, he kicked PO Flores in the stomach and chest and held his hands against his chest. PO Flores saw that § 87(2)(b) had an unidentifiable object in his hands and heard someone on scene state that § 87(2)(b) had something sharp in his hands. PO Flores stated that it was only after § 87(2)(b) was on the ground with his hands behind his back that he identified the object in § 87(2)(b)'s hands as his keys. Upon removing § 87(2)(b) from the vehicle, PO Flores and PO Salgado brought him to the ground by pulling him by his legs and waist. § 87(2)(b) landed on the ground face down. This was not the result of a tactical decision. Once on the ground, § 87(2)(b) had his hands tucked under his chest and did not comply with the officers' instructions to give them his hands. Officers pried § 87(2)(b)'s hands from under him and handcuffed him. PO Flores noticed that § 87(2)(b) sustained a laceration near his eye and believed he sustained it from the impact of hitting the ground. PO Flores prepared a Threat, Resistance, and Injury (TRI) Report noting that he used a forcible takedown to overcome § 87(2)(b)'s resistance/aggression [BR 05].

PO Fiorenza was interviewed at the CCRB on October 21, 2019 [BR 06]. He stated that § 87(2)(b) flailed his arms when officers went to place him under arrest and that he was subsequently brought to the ground. PO Fiorenza also said his hands were tucked underneath him as officers tried to handcuff him on the ground.

Captain Sean Finn of Patrol Borough Brooklyn South prepared an Investigating Supervisor's Assessment Report (ISAR) [BR 09]. His report is consistent with PO Flores's statement that § 87(2)(b) refused to comply with officers' instructions to exit the vehicle and kicked the officers as they attempted to remove him from the vehicle. PO Flores and PO Salgado successfully removed § 87(2)(b) from the vehicle and, with assistance from other officers, handcuffed him.

NYPD Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to place a person in custody or prevent escape from custody.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation C – Discourtesy: An officer spoke discourteously to § 87(2)(b)**

It is undisputed that while attempting to handcuff § 87(2)(b) on the ground, a male officer instructed § 87(2)(b) to give the officers his “fucking” hands. It is further undisputed that a male officer then referred to § 87(2)(b) as a “fucker” or as a “motherfucker.”

§ 87(2)(b) did not allege that an officer used profanity towards him during this incident.

BWC footage recorded by PO Salgado and PO Flores captures the statements described above. However, the footage does not depict which officer made the comments, as the subject officer(s) was(were) out of view of the cameras at the time. PO Flores, PO Fiorenza, and PO DeMichael all listened to this footage during their CCRB interviews and confirmed that they could hear the remarks in the video. However, each denied that they were the officer heard using the profanity and none could identify the subject officer heard.

§ 87(2)(g)

**Allegation D – Discourtesy: Police Officer Frank Fiorenza spoke discourteously to § 87(2)(b)**

**Allegation E – Offensive Language: Police Officer Frank Fiorenza made remarks to § 87(2)(b) based upon the physical disability of § 87(2)(b)**

It is undisputed that PO Fiorenza used profanity towards § 87(2)(b). His BWC footage [BR 13] shows that while awaiting EMS, § 87(2)(b) objected to the arrest and, at the 3:37 time stamp, asked to speak to the supervisor so he could “present his case.” PO Fiorenza then told § 87(2)(b) at the 3:51 time stamp, that he did not “have shit” because the officers have him on camera. § 87(2)(b) continued to object to the officers opening his door and claimed that his vehicle was private property. PO Fiorenza responded, at the 4:50 time stamp, that his vehicle was illegal because it had a “bullshit” plate on it. § 87(2)(b) then started stuttering and, at the 4:52 time stamp, PO Fiorenza repeated the stutter back to § 87(2)(b).

PO Fiorenza stated that he used the profanity above because he was caught up in the “heat of the moment” following the physical struggle with § 87(2)(b). PO Fiorenza denied that he was imitating § 87(2)(b)’s stutter and said that he himself was stuttering because he was still nervous from the struggle. He did not provide any other justification for his actions.

NYPD Patrol Guide Procedure 203-09 requires that officers interact with members of the public in a professional manner.

NYPD Patrol Guide Procedure 203-10 prohibits using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.

§ 87(2)(g)

§ 87(2)(g)

**Allegation F – Abuse of Authority: Sergeant Hasuk Yang threatened to arrest** § 87(2)(b)

**Allegation G – Abuse of Authority: An officer threatened to arrest** § 87(2)(b)

On March 14, 2019, § 87(2)(b)'s mother, § 87(2)(b) provided a phone statement. She alleged that an officer told her she could be arrested if she visited § 87(2)(b) in the hospital while he was in police custody. Because § 87(2)(b) could only describe the subject officer as a male dressed in uniform, this allegation was pled against “An officer.”

On March 22, 2019, § 87(2)(b)'s father, § 87(2)(b) provided a phone statement. He alleged that the supervisor on scene, identified by the investigation as Sgt. Yang, told him that he could go to jail if he tried to see § 87(2)(b) in the hospital while he was in custody.

§ 87(2)(g)

**Allegation H – Abuse of Authority: Police Officer Jair Flores searched** § 87(2)(b) **s recording device.**

**Allegation I – Abuse of Authority: Police Officer Jair Flores deleted information on** § 87(2)(b) **s electronic device.**

After his arrest, § 87(2)(b) picked up his three cell phones from the 70<sup>th</sup> Precinct Stationhouse. When he got home, he realized that an officer accessed the phone and deleted every photo and video that pertained to a police encounter, including the video that § 87(2)(b) recorded at the beginning of this stop. § 87(2)(b) did not know who did this or how.

PO Flores stated that he vouchered all of § 87(2)(b)'s property, including his cell phones. PO Flores explained that because he was § 87(2)(b)'s arresting officer, he was the sole custodian of his property. Therefore, the allegation that an officer searched and deleted information from § 87(2)(b)'s cell phones was pled solely against PO Flores. To voucher the cell phones, PO Flores turned the phones off by pressing the power button. Aside from noting any damage to the cell phones, no additional steps were taken. PO Flores denied that he entered any of § 87(2)(b)'s cell phones and denied accessing any of the data or information stored therein. As such, he denied that he deleted any of the photos or videos on § 87(2)(b)'s phone as alleged.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)

§ 87(2)(b)

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party.
- PO Flores has been a member of service for four years and was named as a subject in one other CCRB complaint and one allegation which was not substantiated. § 87(2)(g)

- PO Salgado has been a member of service for eight years and was named as a subject in four other CCRB complaints and eight allegations, none of which were substantiated.

§ 87(2)(g)

- PO Fiorenza has been a member of service for four years and has been named as a subject in one prior CCRB complaint and one allegation which was not substantiated.
- Sgt. Yang has been a member of service for 13 years and was named as subject in four other CCRB complaints and five allegations, none of which were substantiated.

§ 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- On October 23, 2019, a Notice of Claim request was submitted to the New York City Office of the Comptroller and will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) and § 87(2)(b) have no history of criminal convictions in New York City [BR 14].

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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